

to such reasonable restrictions as the Secretary may prescribe.

“(5) Subject to section 552 of title 5, United States Code, the records, reports, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to, prepared for, or prepared by each restoration advisory board shall be available for public inspection and copying at a single, publicly accessible location, such as a public library or an appropriate office of the military installation for which the restoration advisory board is established, at least until the restoration advisory board is terminated.

“(6) Detailed minutes of each meeting of each restoration advisory board shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the restoration advisory board. The accuracy of the minutes of a restoration advisory board shall be certified by the chairperson of the board.”

#### IMPLEMENTATION REQUIREMENTS FOR RESTORATION ADVISORY BOARDS

Section 326(d) of Pub. L. 103-337 provided that: “Not later than 180 days after the date on which the Secretary of Defense announces a decision to establish restoration advisory boards, the Secretary shall—

“(1) prescribe the regulations required under subsection (d)(2) of section 2705 of title 10, United States Code, as added by subsection (a); and

“(2) take appropriate actions to notify the public of the availability of funding under subsection (e) of such section, as added by subsection (b).”

#### REPORT ON RESTORATION ADVISORY BOARDS AND ASSISTANCE FOR CITIZEN PARTICIPATION ON COMMITTEES AND BOARDS

Section 326(e) of Pub. L. 103-337 directed Secretary of Defense to submit, not later than May 1, 1996, report regarding establishment of restoration advisory boards under subsections (d) and (e) of this section and the expenditure of funds for assistance for citizen participation on technical review committees under subsection (e) of this section.

#### RESTRICTIONS ON ADMINISTRATIVE AND TECHNICAL ASSISTANCE FUNDING

Section 324(d)(2) of Pub. L. 104-106 provided that:

“(2)(A) Subject to subparagraph (B), the total amount of funds made available under section 2705(g) of title 10, United States Code, as added by paragraph (1), for fiscal year 1996 may not exceed \$6,000,000.

“(B) Amounts may not be made available under subsection (g) of such section 2705 after September 15, 1996, unless the Secretary of Defense publishes proposed final or interim final regulations required under subsection (d) of such section, as amended by subsection (a).”

### § 2706. Annual reports to Congress

(a) REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental restoration activities at military installations.

(2) Each such report shall include, with respect to environmental restoration activities for each military installation, the following:

(A) A statement of the number of sites at which a hazardous substance has been identified.

(B) A statement of the status of response actions proposed for or initiated at the military installation.

(C) A statement of the total cost estimated for such response actions.

(D) A statement of the amount of funds obligated by the Secretary for such response actions, and the progress made in implementing the response actions during the fiscal year preceding the year in which the report is submitted, including an explanation of—

(i) any cost overruns for such response actions, if the amount of funds obligated for those response actions exceeds the estimated cost for those response actions by the greater of 15 percent of the estimated cost or \$10,000,000; and

(ii) any deviation in the schedule (including a milestone schedule specified in an agreement, order, or mandate) for such response actions of more than 180 days.

(E) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, such response actions during the fiscal year in which the report is submitted.

(F) A statement of the amount of funds requested for such response actions for the five fiscal years following the fiscal year in which the report is submitted, and the anticipated progress in implementing such response actions for the fiscal year for which the budget is submitted.

(G) A statement of the total costs incurred for such response actions as of the date of the submission of the report.

(H) A statement of the estimated cost of completing all environmental restoration activities required with respect to the military installation, including, where relevant, the estimated cost of such activities in each of the five fiscal years following the fiscal year in which the report is submitted.

(I) A statement of the estimated schedule for completing all environmental restoration activities at the military installation.

(J) A statement of the activities, if any, including expenditures for administrative expenses and technical assistance under section 2705 of this title, of the technical review committee or restoration advisory board established for the installation under such section during the preceding fiscal year.

#### (b) REPORT ON ENVIRONMENTAL QUALITY PROGRAMS AND OTHER ENVIRONMENTAL ACTIVITIES.—

(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made in carrying out activities under the environmental quality programs of the Department of Defense and the military departments.

(2) Each report shall include the following:

(A) A description of the environmental quality program of the Department of Defense, and of each of the military departments, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year in which the report is submitted, and the fiscal year following the fiscal year in which the report is submitted.

(B) For each of the major activities under the environmental quality programs:

(i) A specification of the amount expended, or proposed to be expended, in each fiscal year of the period covered by the report.

(ii) An explanation for any significant change in the aggregate amount to be expended in the fiscal year in which the report is submitted, and in the following fiscal year, when compared with the fiscal year preceding each such fiscal year.

(iii) An assessment of the manner in which the scope of the activities have changed over the course of the period covered by the report.

(C) A summary of the major achievements of the environmental quality programs and of any major problems with the programs.

(D) A summary of fines and penalties imposed or assessed against the Department of Defense and the military departments under Federal, State, or local environmental laws during the fiscal year in which the report is submitted and the four preceding fiscal years, which summary shall include—

(i) a trend analysis of such fines and penalties for military installations inside and outside the United States; and

(ii) a list of such fines or penalties that exceeded \$1,000,000 and the provisions of law under which such fines or penalties were imposed or assessed.

(E) A statement of the amounts expended, and anticipated to be expended, during the period covered by the report for any activities overseas relating to the environment, including amounts for activities relating to environmental remediation, compliance, conservation, pollution prevention, and environmental technology.

(c) REPORT ON ENVIRONMENTAL TECHNOLOGY PROGRAM.—(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made by the Department of Defense in achieving the objectives and goals of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years.

(2) Each such report shall include, with respect to each project under the environmental technology program of the Department of Defense, the following:

(A) The performance objectives established for the project for the fiscal year and an assessment of the performance achieved with respect to the project in light of performance indicators for the project.

(B) A description of the extent to which the project met the performance objectives established for the project for the fiscal year.

(C) If a project did not meet the performance objectives for the project for the fiscal year—

(i) an explanation for the failure of the project to meet the performance objectives; and

(ii) a modified schedule for meeting the performance objectives or, if a performance objective is determined to be impracticable or infeasible to meet, a statement of alter-

native actions to be taken with respect to the project.

(d) DEFINITIONS.—In this section:

(1) The term “military installation” has the meaning given such term in section 2687(e) of this title, except that such term does not include a homeport facility for any ship and includes—

(A) each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense;

(B) each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances; and

(C) each facility or site at which the Secretary is conducting environmental restoration activities.

(2) The term “environmental quality program” means a program of activities relating to environmental compliance, conservation, pollution prevention, and such other activities relating to environmental quality as the Secretary concerned may designate for purposes of the program.

(3) The term “major activities”, with respect to an environmental quality program, means the following activities under the program:

(A) Environmental compliance activities.

(B) Conservation activities.

(C) Pollution prevention activities.

(Added Pub. L. 99-499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 101-189, div. A, title III, §357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; Pub. L. 101-510, div. A, title III, §§341, 342(a), Nov. 5, 1990, 104 Stat. 1536, 1537; Pub. L. 103-160, div. A, title X, §1001(a)-(d), Nov. 30, 1993, 107 Stat. 1742-1744; Pub. L. 103-337, div. A, title X, §1070(b)(9), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 104-106, div. A, title III, §324(f), Feb. 10, 1996, 110 Stat. 254; Pub. L. 104-201, div. A, title III, §321, Sept. 23, 1996, 110 Stat. 2477; Pub. L. 105-85, div. A, title III, §§344(a), 345, Nov. 18, 1997, 111 Stat. 1688; Pub. L. 105-261, div. A, title III, §325, Oct. 17, 1998, 112 Stat. 1965; Pub. L. 106-65, div. A, title III, §§322, 323(c)(1), Oct. 5, 1999, 113 Stat. 560, 563; Pub. L. 107-107, div. A, title III, §315, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 109-163, div. A, title III, §311, Jan. 6, 2006, 119 Stat. 3190.)

#### AMENDMENTS

2006—Subsec. (b)(2)(D) to (F). Pub. L. 109-163 added subpar. (D), struck out former subpars. (D) and (E) which related to a list of the planned or ongoing projects necessary to support the environmental quality programs and a statement of the fines and penalties imposed or assessed against the Department of Defense and the military departments under environmental laws, redesignated subpar. (F) as (E) and struck out “and amounts for conferences, meetings, and studies for pilot programs, and for travel related to such activities” before period.

2001—Subsec. (c). Pub. L. 107-107, §315(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

“(c) REPORT ON CONTRACTOR REIMBURSEMENT COSTS.—(1) The Secretary of Defense shall submit to the Con-

gress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on payments made by the Secretary to defense contractors for the costs of environmental response actions.

“(2) Each such report shall include, for the fiscal year preceding the year in which the report is submitted, the following:

“(A) An estimate of the payments made by the Secretary to any defense contractor (other than a response action contractor) for the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

“(B) A statement of the amount and current status of any pending requests by any defense contractor (other than a response action contractor) for payment of the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.”

Subsec. (d). Pub. L. 107-107, §315(a)(2), (b), redesignated subsec. (e) as (d), struck out pars. (1) and (3) defining “defense contractor” and “response action contractor”, respectively, and redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 107-107, §315(a)(2), redesignated subsec. (e) as (d).

1999—Subsec. (b). Pub. L. 106-65, §322(a), amended heading and text of subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) relating to reports on environmental compliance activities.

Subsec. (d). Pub. L. 106-65, §323(c)(1), added subsec. (d).

Pub. L. 106-65, §322(b), struck out subsec. (d) which required the Secretary of Defense to submit annual reports to Congress on environmental activities of Department of Defense overseas.

Subsec. (e)(4), (5). Pub. L. 106-65, §322(c), added pars. (4) and (5).

1998—Subsecs. (a)(1), (b)(1), (c)(1), (d)(1). Pub. L. 105-261 substituted “not later than 45 days” for “not later than 30 days”.

1997—Subsec. (b)(2)(H). Pub. L. 105-85, §344(a), added subpar. (H).

Subsecs. (d), (e). Pub. L. 105-85, §345, added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (a)(2)(J). Pub. L. 104-106 added subpar. (J).

Subsec. (d)(1)(A). Pub. L. 104-201 substituted “20 entities” for “100 entities”.

1994—Subsec. (a). Pub. L. 103-337 made technical correction to Pub. L. 103-160, §1001(a). See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103-160, §1001(a), as amended by Pub. L. 103-337, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

“(1) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

“(2) Each such report shall include the following:

“(A) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

“(B) The status of response actions contemplated or undertaken at each such facility.

“(C) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

“(D) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.”

Subsec. (b). Pub. L. 103-160, §1001(b), inserted “Activities” in heading and amended text generally, restating

substance of former par. (1) in pars. (1) and (2) and deleting substance of former par. (2) which defined “military installation”.

Subsecs. (c), (d). Pub. L. 103-160, §1001(c), (d), added subsecs. (c) and (d).

1990—Subsec. (b). Pub. L. 101-510, §342(a), added subpar. (G) at end of par. (1).

Pub. L. 101-510, §341, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “ENVIRONMENTAL BUDGET REPORT.—(1) Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Defense shall submit to Congress a report on—

“(A) the funding levels required for the Department of Defense to comply with applicable environmental laws during the fiscal year for which the budget is submitted; and

“(B) the funding levels requested for such purposes in the budget as submitted by the President.

“(2) The Secretary shall include in the report an explanation of any differences in the funding level requirements and the funding level requests in the budget.”

1989—Pub. L. 101-189 substituted “reports” for “report” in section catchline, designated subsec. (a) as subsec. (a)(1), struck out subsec. (b) heading “MATTERS TO BE INCLUDED”, redesignated subsec. (b) as subsec. (a)(2) and pars. (1) to (4) as subpars. (A) to (D), respectively, and added subsec. (b).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103-337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160, as enacted.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 357(b) of Pub. L. 101-189 provided that: “The first environmental budget report under subsection (b) of section 2706 of such title [10 U.S.C. 2706(b)] (as added by subsection (a)) shall be submitted at the same time the President submits the budget for fiscal year 1992.”

#### ASSESSMENT OF ENVIRONMENTAL REMEDIATION OF UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS

Pub. L. 107-107, div. A, title III, §313, Dec. 28, 2001, 115 Stat. 1051, which required the inclusion of a comprehensive assessment of unexploded ordnance, discarded military munitions, and munitions constituents located at current and former facilities of the Department of Defense in the 2002 and 2003 reports submitted to Congress under subsec. (a) of this section, was repealed by Pub. L. 109-364, div. A, title III, §313(e), Oct. 17, 2006, 120 Stat. 2139.

#### FIRST REPORT ON ENVIRONMENTAL TECHNOLOGY PROGRAM

Pub. L. 106-65, div. A, title III, §323(c)(2), Oct. 5, 1999, 113 Stat. 563, provided that: “The Secretary of Defense shall include in the first report submitted under section 2706(d) of title 10, United States Code, as added by this subsection, a description of the steps taken by the Secretary to ensure that the environmental technology investment control process for the Department of Defense satisfies the requirements of section 2709 of such title, as added by subsection (b).”

#### REPORT IN FISCAL YEAR 1998

Section 344(b) of Pub. L. 105-85 provided that: “The statement submitted by the Secretary of Defense under subparagraph (H) of section 2706(b)(2) of title 10, United States Code, as added by subsection (a), in 1998 shall, to the maximum extent practicable, include the informa-

tion required by that subparagraph for each of fiscal years 1994 through 1997.”

COMPLIANCE WITH ANNEX V TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973

Section 324(b), (c) of Pub. L. 104-201, as amended by Pub. L. 105-85, div. A, title X, §1073(c)(1), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 108-136, div. A, title X, §1031(f)(1), Nov. 24, 2003, 117 Stat. 1604, provided that:

“(b) SENSE OF CONGRESS.—(1) It is the sense of Congress that it should be an objective of the Navy to achieve full compliance with Annex V to the Convention as part of the Navy’s development of ships that are environmentally sound.

“(2) In this subsection and subsection (c), the terms ‘Convention’ and ‘ship’ have the meanings given such terms in section 2(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)).

“[(c) Repealed. Pub. L. 108-136, div. A, title X, §1031(f)(1), Nov. 24, 2003, 117 Stat. 1604.]”

REPORT ON SERVICES OBTAINED PURSUANT TO REIMBURSEMENT AGREEMENTS DURING FISCAL YEAR 1996

Section 321(b) of Pub. L. 104-106 provided that: “The Secretary of Defense shall include in the report submitted to Congress with respect to fiscal year 1998 under section 2706(a) of title 10, United States Code, information on the services, if any, obtained by the Secretary during fiscal year 1996 pursuant to each agreement on a reimbursable basis entered into with a State or local government agency under section 2701(d) of title 10, United States Code, as amended by subsection (a). The information shall include a description of the services obtained under each agreement and the amount of the reimbursement provided for the services.”

TIME OF SUBMISSION OF REPORTS

Section 1001(e) of Pub. L. 103-160 provided that:

“(1) A report submitted in 1994 under subsection (a) of section 2706 of title 10, United States Code, as amended by subsection (a), and under subsection (b) of such section, as amended by subsection (b), shall be submitted not later than March 31, 1994.

“(2) A report under subsection (c) of section 2706 of such title, as added by subsection (c), shall be submitted for fiscal years beginning with fiscal year 1993. Any such report that is submitted for fiscal year 1993 or fiscal year 1994 shall be submitted not later than February 1, 1995.”

**§ 2707. Environmental restoration projects for environmental responses**

(a) ENVIRONMENTAL RESTORATION PROJECTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

(b) TREATMENT OF PROJECT.—Any construction, development, conversion, or extension of a structure, and any installation of equipment, that is included in an environmental restoration project under this section may not be considered military construction (as that term is defined in section 2801(a) of this title).

(c) SOURCE OF FUNDS.—Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

(d) ENVIRONMENTAL RESTORATION PROJECT DEFINED.—In this section, the term “environmental restoration project” includes any construction, development, conversion, or extension

of a structure, or installation of equipment, in direct support of a response.

(Added Pub. L. 107-314, div. A, title III, §313(a)(2), Dec. 2, 2002, 116 Stat. 2507.)

PRIOR PROVISIONS

A prior section 2707 was renumbered section 2700 of this title.

**§ 2708. Contracts for handling hazardous waste from defense facilities**

(a) REIMBURSEMENT REQUIREMENT.—(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor’s or subcontractor’s breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) EXCEPTION TO REIMBURSEMENT REQUIREMENT.—Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),